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“*The Brilliance and Blindness of Arendt: Exploring Arendt’s Work to Reflect on Contemporary US Migration Debates”*

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In the past few years, reports about Central American children held in cages, family separation, and horrendous conditions in detention centers have emerged in the American press. Nevertheless, there has been significant resistance to Alexandria Ocasio-Cortez’s use of the term “camp” to describe these migrants’ treatment (Sullivan 2019; see Lasch et al. 2018; Pitzer 2017; Sukin 2019). Implicitly or explicitly, those who resist this categorization assume the following:

that migrants must have some rights (e.g. the children in cages also get their day in court) )—in this way, they suggest that detention is an extension of the prison system; that powers defining and policing the “border” are congruent with representative democracy; and that detained migrants somehow deserve to be treated as “illegal,” even if not to this degree (see Bosniak 2018 on the latter two points). In all of these assumptions, what is ignored is the deeply racist elements of current policies which connect today’s mass deportation and detention regime to eugenic, undemocratic aspects of contemporary migration policy since the late 1880s. This is evident in the nearly exclusive focus on Presidents Obama and Trump as the “bad guys” in this narrative, again ignoring a longer history of biased, arbitrary policy.

As an important theorist of denationalization, statelessness, and camps, Hannah Arendt’s work is particularly relevant to understanding these assumptions, as more than a few headlines have suggested (see Grenier 2017; Williams 2017). In fact, I explore below how the substance of her work was not merely analogous to the history of US migration policy until 1996 but was specifically pertinent to it. As I explain, Arendt’s work is up to the task of explaining the harsh and undemocratic migration policies foreigners are currently experiencing in the U.S. At the same time, her work also illuminates two important things: the uniqueness of migration policy as an arbitrary exercise of sovereign powers on domestic soil but second, a false belief that migration policy is wholly unrelated to domestic policy (e.g. putting foreign children in cages is irrelevant to the treatment of American-born minors). Arendt’s work importantly demonstrates how immigrant detention since the 1880s has always been a “camp,” if a camp is a geographical space in which the law is legally suspended (see Arnold 2018; Pitzer 2017). The newest development since the turn of this century is *not* the extra-constitutional nature of detention but rather, its predominance as a tool of *mass* immigration policy (Kanstroom 2007)—something Arendt’s work helps us to appreciate.

Second, in contending that immigration policy is worse today than in the past, we fail to recognize important historical dynamics permitting the use of detention and other extra-constitutional techniques that trace back to the 1880s[[1]](#endnote-1) and 1990s,[[2]](#endnote-2) and which were expanded under George W. Bush. Trump only made things worse. These dynamics are rooted in the very trends Arendt identified in European nation-states. While she excluded the United States from her account of racism, statelessness, and displacement in the *Origins of Totalitarianism*, I will explain below why this was incorrect (see, e.g. Arendt 2018c, 257). Third and perhaps most importantly, the debate about detention centers as prisons (criminal justice) *or* camps (civil law) rests on an important distinction—particularly as it connects to Arendt’s work—but the claims of absolute difference between the two systems are dangerously incorrect (Arnold 2018; Stumpf 2006). In failing to see how civil immigration law and the criminal justice system have been dialectically opposed throughout the 20th century and yet have also converged since 1996, we miss an opportunity to see how the practices used on foreigners have also been used on US citizens.

The value of Arendt’s work in assessing these developments is her focus on how racialized sovereignty has eclipsed the rule of law, thus collapsing not merely the categories of criminal and stateless, but also citizen and criminal. [[3]](#endnote-3) In this way, she recognized the dialectical interaction between these categories, leading not merely to their opposition but also, their possible convergence. Her arguments about how state-sponsored racism leads to the decline of the state allow us to comprehend the damage not only to disenfranchised citizens and foreign refugees but also to the judicial system, the rule of law, and to citizenship. In this way, she also predicted a merger between civil law (migration) and criminal law as well as the in-between status of personhood, positioned between foreigner and citizen (for a different interpretation of personhood, see Gündoğdu 2015). At the same time, she did not recognize these dialectical interactions at the empirical level, including failing to:

a) identify how American immigration policy was eugenic, including blocking family reunification, from when she arrived in this country up through the 1960s[[4]](#endnote-4)

b) recognize how these factors were *connected* to the treatment and criminalization of African Americans during the same time period (Jim Crow) such that even though the criminal justice and immigration policy systems were conceived of as opposites, this opposition was in a dialectical relationship, such that one system also informed the other[[5]](#endnote-5)

Thus, while Arendt’s critique of the nation-state is paradigm-shifting and her insights about how racism is a transnational dynamic, corrupting the nation-state and leading to its “decline” are instructive, she also adheres to forms of crypto-normativity and/or “judgment” that undercut the radical force of this critique (see Villa 1992; Simmons 2011 for convincing but nearly opposite conclusions). However, as I explain in the conclusion, many of her failures are our failures, too. If we truly care about children in cages and the systematic use of camps as a key tool of immigration policy, we should also care about the damage it does to other facets of political life: particularly, the damage of the crimmigration system to citizenship *and* prisoners’ rights (see Stumpf 2006). And we should do so without falling into the trap of erroneous historical claims and/or hierarchical comparisons that falsely oppose what is really linked.

Below, I begin with a brief explanation of the contemporary problem and then focus on Arendt’s work as it relates to understanding these contemporary issues.[[6]](#endnote-6) In particular, I examine Arendt’s work on the stateless in contrast to her writings on other marginalized groups: a key question is how she understood the category of racial others and the use of racism in contexts outside of the Holocaust? Three examples provide insight into these questions—her writings about: African Americans; colonial others; and the Palestinians. I argue that she treats the plight of each group as requiring reform (including diplomacy, civil disobedience, and pragmatic approaches) in contrast to other groups who are in need of more radical (or: revolutionary) measures, including displaced Jews, interned Japanese Americans, and Hungarian refugees (see Berkowitz 2018).[[7]](#endnote-7) Unacknowledged hierarchies mar this work, leading to an inconsistent theorization of race, disenfranchisement, and displacement (see e.g. Locke 2007). In particular, her distinction between stateless foreigner and citizen criminal is at odds with her prediction that the practices used on foreigners will then be applied to citizens (Arendt 1979, 290).[[8]](#endnote-8) It is not that the criminal-stateless distinction is wrong but that despite her own predictions about the decline of the state, she does not *also* predict a possible collapsing of these two categories.

While Arendt claims that the stateless are the most “symptomatic” group in contemporary politics (and Giorgio Agamben similarly holds that the camp is the *nomos* of the modern, 1994), I believe that the binary is too stark. Each author asks us to choose one category over the other—the stateless over the criminal, extra-legality over bureaucratic rules and surveillance, the camp over the prison—while the messy truth has often involved the interaction between these spheres. In fact, if it is the sovereign state (as opposed to the constitutional state[[9]](#endnote-9)) that wants the public to view these spheres as opposed and conceptually isolated, one would hope political theorists could identify and critically analyze the grey areas and in-between statuses of individuals caught up in state-sponsored racism (see Berkowitz 2018).[[10]](#endnote-10) Indeed, the important blurring of distinctions between stateless and partially disenfranchised citizen means that her claims about the stateless are hyperbolized. Nevertheless, I provide concluding insights that affirm the relevance of her work, even if there are unsatisfying gaps between her theoretical potential and her analysis of different marginalized groups.[[11]](#endnote-11) The gaps are not unique to her, but characterize some of today’s (mis)understandings of the US crimmigration system stated above.

~*the contemporary problem*

Arendt claimed that the United States was not a nation-state (2018c, 257) and denied that the totalitarian techniques developed in Europe—from disenfranchisement to over-policing to “killing the juridical man” to the establishment of a camp system—were also developed in the United States (see 2018b). She also misunderstood the power of the federal government, particularly its exclusive power over foreigners as well as citizens-made-foreigners, including internal and external battles against communism (see 2018c, 257 and shockingly incorrect statements about US migration policy: OT 277n21; and slavery: OT 297). In this misunderstanding, she idealized the Constitution and even 1960s and ‘70s activists desire to restore the law in the face of governmental corruption—failing to see how constitutionally granted powers had legally suspended the law in matters of immigration and rooting out ideological enemies (see Arendt 1972). In this brief section, I will provide a legal history that demonstrates that US migration policy did not merely parallel European suspensions of the law for racialized others (1880s—1940s), but implemented many of the same techniques for the same reasons, granted with different outcomes.

In the late 1880s, a series of cases were decided by the Supreme Court that upheld the constitutionality of Chinese Exclusion. [[12]](#endnote-12) These cases established the *plenary power doctrine* in immigration policy, giving the federal government exclusive authority over matters of immigration because it is foreign policy.[[13]](#endnote-13) These decisions held that immigration cases would not be subject to constitutional review, even when policies or enforcement violated constitutional rights or the law more generally. For example, racial profiling in the immigration context has been upheld by the Court, whereas it is illegal for police personnel to conduct racial profiling (see Johnson 2005). Constitutional protections against retroactive policies and cruel and unusual treatment do not apply to immigration policy and enforcement (see Kanstroom 2007; Stumpf 2006). Immigration was also deemed a civil matter and “detention” (including being held on a boat) was therefore, not considered a “liberty deprivation” or criminal punishment (see *Wing Wong v United States* in particular). Together, the different elements of these decisions and case law over the next 110 years meant that immigrants were legally “non-persons” when dealing with federal authorities, but that long-term foreign residents could largely enjoy constitutional *protections*, but not rights, at the state level (Varsanyi 2008; see Heeren 2015). Arendt missed this shift in American government, as the federal government’s power grew in its assertion of unchecked sovereignty (Kanstroom 2007).

For over a century, the Supreme Court has maintained that migration policy is “political” per the “political questions doctrine” and so, ironically, the Court created and has repeatedly upheld the very power that largely excludes judicial review: “‘[The federal government] is invested with power over all the foreign relations of the country, war, peace, and negotiations and intercourse with other nations’” (*Chae Chan Ping* majority quoted in Varsanyi 2008, 885) and ‘[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. *Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference*.’” (Varsanyi 2008, n10 893) This created a system that effectively “killed the juridical man” and created an arbitrary system based on political whim—trends that Arendt identifies in European states but is blind to in the US.

For example, long-term Chinese residents with significant ties to this country could be treated as first-time entrants and held indefinitely on boats or deported back to their country of origin. Because there were few checks and balances built into this system, with the absence of judicial review, legal but draconian methods of control and/or removal were employed on the basis of an “emergency” that a “noxious race” would pollute US society (*Chae Chan Ping* (1888)). While legal scholars like Daniel Kanstroom recognize detention and deportation as equivalent to capital punishment (2007), the *Wing Wong* Supreme Court (1896) conceived of detention and deportation as dialectically opposed to the criminal justice system. In this way, migration policy fashioned two key tools that Arendt has identified as “totalitarian” to deal with masses of people deemed to be racially inferior, from Chinese individuals (particularly women), to Japanese individuals, Eastern Europeans, and much more of the globe up through 1965.[[14]](#endnote-14)

Despite all of this, a dual system was established—extra-constitutional federal power versus constitutionally grounded state power—allowed foreign *residents* to experience a certain level of daily political stability throughout the twentieth century. More briefly, foreign residents were protected by 14th Amendment “personhood” as states were barred from discriminating against them, even though the federal government was given a “blank check.” Case law throughout the twentieth century often added to rights and protections at the state level (notably in *Plyler* (1982), which still allows all minor age “persons” to attend public schools). At the same time, the “Great Repatriation” of Mexican Americans in the 1930s, Japanese internment, McCarthy era deportations, and other Cold War cases were reminders that long-term residency and basic rights were merely privileges that could be revoked at the whim of the federal government (see Arendt 2018b; Kanstroom on ideological deportations during both Red Scares, 2007).[[15]](#endnote-15) However, at the federal level, Arendt’s claim that foreigners had “no right to rights” was correct. The Cold War case of Eastern European immigrant Joseph Mezei is one example of this (*Shaughnessy v United States ex rel. Mezei* U.S. 206 (1953)).

Mezei was a legal permanent resident with no criminal record. He established long-term ties to the United States, but when he decided to visit his dying mother in Eastern Europe in the early 1950s, he was treated as an absolute foreigner upon returning. He was indefinitely detained at Ellis Island based on secret evidence that, to this day, has not been produced. His clean criminal record and long-term ties were denied as the Supreme Court created “entry fiction” to justify his indefinite detention. Entry fiction entailed treating this long-term resident as if he were a first-time entrant, thus obliterating the lines between outside and in, sovereign and domestic, and border versus post-entry policy. Like many detainees today, attempts to deport him were futile in that his detainee status made him undesirable to any other nation, justifying his indefinite detention.

Mezei was eventually released, only due to a media campaign in the *New York Times* that convinced immigration authorities to release him based on mercy and not because he had rights (on the use of “grace” and “mercy” to avoid establishing rights for migrants, see Kanstroom 2007, 233-233; Wadhia 2015). His case is an example of the legal and yet extra-constitutional authority of the plenary power wielded at the federal level. Like the Chinese, Mezei’s country of origin was viewed as criminal*izing* his appearance at the border—that is, his *status* rather than an action became the determining factor in his exclusion.[[16]](#endnote-16)

While the criminal justice system should not be idealized, Arendt’s claim that at least, criminals are persons before the law and have rights as criminal suspects was true in important respects, particularly in the 1960s and ‘70s when criminal rights expanded and sentencing was still moderate (see Alexander 2011). In the language of the U.S. legal system, whereas a stateless person is a “criminal” through his/her status (or: a *malum prohibitum* offense), a would-be criminal is charged because of a purportedly immoral act (*malum in se*) (see Hernández 2014). A stateless person is not merely a legal exception or an anomaly but is legally non-existent while a criminal at least has a right to know the charges against her/him, the right to counsel, the right to a trial, and the right to a defined period of time in jail or prison if found guilty. In all these instances, the criminal therefore exists as a subject before the law while the stateless person is denied personhood in the legal and thus existential sense—and yet, this non-personhood entails some sort of legal acknowledgment that led to the suspension of personhood rights.[[17]](#endnote-17) However, the representative government acts to denationalize or otherwise “kill the juridical man” and to detain this individual in a “camp” outside normal rule (Arendt 1979, 447). Further, while Arendt notes the absolute innocence of the stateless, they are also marked as “outlaws” and thus, as inherently criminal. Their “illegality” then characterizes them as they seek work or a residence, making those activities also appear to be “illegal” in current US discourse. In contrast, if the stateless person steals food (e.g.), s/he will have legal acknowledgement and criminal rights (Arendt 1979, 286). The fact that there is quite a lot of truth to this makes Arendt’s comparison between the stateless and accused criminals still relevant in many respects.[[18]](#endnote-18) Among other things, her work explains how residency and seeking work also appear to be criminal acts, demonstrating how conducting life-sustaining activities are criminalized when a person is undocumented.

However, in the 1980s, changes occurred in both the criminal justice system and immigrant policing, culminating in major transformations in the mid-1990s. In 1996, the plenary power doctrine was partially devolved to the states in matters of anti-terror policing and welfare. These laws criminalized quite a lot of resident foreigners’ actions and status, including retroactively, such that minor offenses of the past, for which a fine had been paid or time served, could serve as the pretext for removal proceedings.[[19]](#endnote-19) That is, criminal consequences were linked more firmly to immigration status and policing without expanding criminal rights. The diminishment of constitutional personhood at the state and local level then meant that immigrant detention was now “legal” and mass detention was established in the next decade or so. To be clear, immigrants’ non-personhood was not transferred to the states but rather, partially extended, expanding rightlessness in both spheres (federal and state).[[20]](#endnote-20)

At the same time, criminal protections had been eroded through case law in the 1980s and 1990s; prisoner rights had similarly been attacked in case law; several misdemeanor drug offenses were reclassified as felonies; sentencing lengthened dramatically; and incarceration increased (Arnold 2018; Gottschalk 2016; Stumpf 2006). These changes did not merely bring the criminal justice system closer to the immigration system but also aided their potential merger in important respects (Stumpf 2006). First, as the rights of criminal suspects have diminished over time—for example, weaker standards for stop and search practices and warrantless wiretaps—criminal suspects have fewer rights at the investigative stage. Like the stateless, there is now more of a presumption of guilt, with innocence to be proved during or after the fact. Second, the intersection with race and economic class is so significant in policing that these categories bias the evaluation of suspected criminal activity. Indeed, activities surrounding poverty are often enough to arouse police scrutiny ensuring that, like stateless foreigners, *status* heavily determines judgements about criminal action. Third, prison *conditions* have diminished in conjunction with the loss of prisoners’ rights: from overcrowding to poorly trained guards, prisons across the country have experienced worsening conditions (see Alexander 2010). Prisoners’ *rights*—from visitation to access to recreation and library books—have also diminished drastically while sentences have increased exponentially, administrative segregation (solitary confinement) has become a normal disciplinary measure, and forms of torture are no longer considered “cruel and unusual” (see Dayan 2011b; Stumpf 2006). These conditions and rightlessness bring prisoners’ experiences closer to those of detained immigrants (i.e. statelessness), even if this proximity does not mean absolute equivalence (see Jurgens 2012).

From 1996 on, there has been more than similarity between the two systems as prisons and jails are also often used as detention spaces. The increasing privatization of confinement also connects the material and geographical spaces of each detained group. The legitimization of torture methods and the watering down of prison conditions further affect all spaces of confinement: solitary is a normal punishment for detained immigrants and prisoners alike and there is no right to reading material, visitors, or adequate space and recreation (see Arnold 2018; Dayan 2011a). In sum, decisions scaling back prisoners’ rights and permitting torture have directly affected immigrant detainees, rather than merely influencing them in secondary or indirect ways.[[21]](#endnote-21) Conversely, the non-personhood of immigrants certainly characterizes the status and treatment of prisoners and parolees, even if this differs by degrees from the non-personhood of immigrants (see Heeren 2015). [[22]](#endnote-22) To put it differently, the dialectical interaction between the definition of civil law and criminal law, which characterized much of the twentieth century, has unsurprisingly led to a mutual interaction between the two spheres more recently.

Arendt’s comparison between the treatment of a criminal in contrast to a stateless person indicates an important distinction between the civil and extra-constitutional qualities of immigration policy and the criminal justice system, which is still loosely based on constitutional protections. The contrast, moreover, helps to illuminate how shockingly rightless foreigners could be throughout the 20th century without having committed any crime—their innocence was instead a key feature of their detain-and deport-ability. But the binary certainly whitewashes how the US criminal justice system has always been racist, class-biased, and locally harsh (the South has much more degraded prison conditions than other regions and certain states like Alabama and Georgia incarcerate far more people than other states (on this last point, see Alexander 2011, 28-30; Beller 2015; Press 2016). At the same time, the increasing convergence of the two systems since 1996 helps to expose the degree to which the “nation” has become racially defined (noting that this racialization takes on multiple and local variants within the same country), totalitarian *tactics* are increasingly predominant (including non-personhood and detention and deportation as mass policy tools since the turn of this century),[[23]](#endnote-23) and how the racialized “nation” works in two distinct and yet related ways to create outsiders in the midst of citizen-insiders.

As I discuss below, Arendt’s important arguments about the stateless lacking the “right to rights” and being interned in spaces that reinforced the death of individuals’ “juridical status” do not seem irrelevant at all in an age of mass detention and deportation—rather, they are increasingly pertinent to the carceral system *also*, even if the circumstances are different by matters of degrees and a relatively different legal code. At the empirical level, Arendt did recognize the marginalization of others outside of the Holocaust context, but not as a *link* to different forms of statelessness, including internal displacement (as with Palestinians—see Feldman 2007). While she predicted that the state that allowed for the disenfranchisement and deportation of its citizens would then use the same tactics on others, she often did not recognize these others as experiencing the same terror and uprootedness outside of the Nazi context.[[24]](#endnote-24) At best, her treatment of colonial subjects, the Palestinians, and African Americans is sympathetic but narrowly analyzed (for a more critical reading, see Gines 2014). At the theoretical level, however, as discussed above, her broader critique of racism and the danger of a racialized nation-state *do* connect these different groups, as I explain in the next section.

~*Arendt—vision and blind spots*

In understanding how the history of US immigration policy fits into her account of the “decline of the nation-state” and the rise of political racism, Arendt’s work is and was importantly groundbreaking for the following reasons. First, she identified totalitarian systems as distinctively *modern* and proceeding from representative democracies. Different countries could experience similar forms of decline, even as each case took on unique qualities. The weakening of the rule of law, the rise of the mob and racism, and the greater use of the police were all facets of totalitarian rule that appeared in nation-states to varying degrees. The modern character of totalitarian tactics involved the use of the law to suspend the law (thus, “killing the juridical person”; Arendt 1979, 447); border policing to reinforce territorial integrity; and mass deportations to assert and maintain sovereignty (Arendt 1979). Challenging arguments that Nazism was historically unique, that anti-Semitism was isolated to Germany, and/or that fascism was a return to primitivity, her work importantly demonstrated how state-sponsored racism and intolerance of political deviance could occur in nation-states once founded on the rights of citizens.

Second, she illuminated how enacting the “right to rights”—human rights—was not possible when she was writing for at least two reasons (see also Gündoğdu 2015). There was no guarantor of individual rights outside of the nation-state and thus, masses of stateless people experienced this failure as no institution could aid them. This was, in part because international leagues and institutions were “inter” national rather than “supra” national; thus, they were still firmly state-centric (see also Feldman 2007; Gündoğdu 2015; Moyn 2010). That is, to the degree that institutions viewed the nation-state as a territorially delimited “home,” human rights aid could only help to relocate asylees but not to fully integrate them into a new polity. From a different perspective, refugee resettlement in a new nation-state or camp merely upheld the very logic that had led to disenfranchisement and displacement in the first place.[[25]](#endnote-25) Nor was citizenship a guarantee of rights as mass denationalization showed: even protective rights could be revoked with disenfranchisement (Arendt 1979, ch. 9; Arendt 2018, 98). As masses of people were stripped of political membership and refused entry into potential host countries, the right to asylum was effectively abolished, destroying the possibility of seeking a new homeland (Arendt 1979, ch. 9).

Third, she traces the rise of racist ideologies that transmogrify into pseudo-scientific truths in a democratic context. As racial classifications, broadly conceived, increasingly determine who is a citizen and who is now a foreigner, the democratic guarantees of the state are undermined. To the degree to which capitalism plays a role in these dynamics, inadvertently strengthening racism, the bounds of the nation-state expand in individualistic and coercive ways (Arendt, OT, ch 5). In effect, she notes the enticing simplicity of racism as a universal signifier that comes to define national interest and supersede guarantees of equality, consent, and representation (1979, ch. 6).

Fourth, she conceives of a geospatial site of confinement—the camp—that serves as a proxy to the nation-state (Arendt 1979, 284). This argument highlights the particularly modern dynamics that lead to their emergence and importantly, the fact that camps are “outside normal judicial procedure”(Arendt 1979, 447). The goals are to sow terror more broadly and to establish an “arbitrary system” that “destroy[s] the civil rights of the whole population” (Arendt 1979, 451). Her analysis of camps elucidates a number of contemporary issues:

a) the camp becomes material proof that detainees belong there (1979 ch 12);

b) the camp is a disciplinary spectacle for all residents of a country, symbolizing the strength of extra-constitutional power and the greater role of the police in everyday governance (Arendt 1979, ch. 12);

c) the camp is a geographically ambivalent space that is conceived of as temporary but which becomes a permanent solution to the issue of statelessness (Arendt 1979, ch. 9);

d) because of the stigma of detention, the stateless are undeportable, because they have become “unidentifiable beggars” such that indefinite detention, forced repatriation, and/or extermination become the logical solutions to their undeportability (Arendt 1979, ch. 9);

e) the criminal innocence of detainees is crucial to sowing terror and in reinforcing biological determinism.

Synthesizing her contributions, Arendt’s work in *Origins of Totalitarianism* (*OT*) explains processes of denationalization occurring with the rise of racism such that the citizen becomes the foreigner, who can be deported to a camp that spatially reinforces the rightlessness of the former citizen.[[26]](#endnote-26) She predicts that the government that has allowed race or political intolerance to supersede its democratic guarantees will continuously need to find new groups whose status is deemed undesirable (Arendt 1979, ch. 12). In this way, she does not just trace the process of denationalization of one group in particular, but a dynamic process in which new groups can later be targeted. Part of her point is that the power structure of the government has changed such that the increased use of the police, the spectacle of camps, racist ideology, and denationalization would affect *all* residents, whether they are minorities, dissenters, and/or full citizens. In this way, totalitarian tools such as racist-based disenfranchisement, arbitrary policing, and the construction of camps, establish a dialectic between citizen and foreigner that is at once polarized but which also suggests a potential merger. Arendt’s contrast between a stateless person and a criminal dramatize the significant losses that occur with denationalization.

As discussed above, in chapter 9 of *OT*, Arendt argues that a stateless person’s plight is indicative of the collapse of the “rights of man” and citizenship, such that the stateless have no “right to have rights.” However, a small “theft” would ironically help this person, affording her/him criminal rights and making her/him a legally acknowledged person: “the same man who was in jail yesterday because of his mere presence in this world, who had no right whatever and lived under threat of deportation, or who was dispatched without sentence and without trial to some kind of internment because he had tried to work and make a living, may become almost a full-fledged citizen because of a little theft” (Arendt 1979, 286). Arendt’s comparison is perhaps most importantly a moral one: it allows the reader to understand precisely what has been lost. *Even* the rights of a criminal are better than the rightlessness (“the fool’s freedom”) of a stateless person. Or: *even* a thief has more rights than the “innocent” and yet, rightless displaced person. But she is also making a comparison based on a standard of a rule of law that was important to her argument and thus, the comparison cannot be dismissed as minor.[[27]](#endnote-27) While suspected criminals were acknowledged by the law, citizens who were disenfranchised by the Nazis and forcibly removed to labor and death camps were “outside the pale of law.”[[28]](#endnote-28) Her point was to convey how profoundly rightless displaced peoples were, as well as emphasizing the novelty of this condition.

Arendt’s analyses of statelessness led to two related conclusions. First**,** that the rightlessness of the stateless undermines the “state” part of the nation-state: democratic guarantees, inalienable rights, and meaningful political participation in an inclusive and plural public space. Nevertheless, criminals still enjoy legal acknowledgement before the law and some range of criminal protections, even if their citizenship is suspended. Indeed, the rights of the criminal are conceived of in dialectical interaction with the rightlessness of the stateless (Arendt 1979, 447-448). This is for two reasons: mechanisms and sites of disenfranchisement are defined in opposition to criminal status and prisons (Arendt 1979, 286, 295, 447-448). However, second, she predicts that the damage done to the nation-state is such that different citizens groups will *also* be targeted and often in a variety of ways, producing quasi-statelessness, legally acknowledged but separate minority status, and “economic” refugees.[[29]](#endnote-29) Simply put, criminals *could* become “outlaws” under this system. That is, she notes that all of these distinctions are variations of a radical form of displacement based in nation-state dynamics and that each group that is quasi-stateless could easily become stateless once totalitarian mechanisms of denationalization and displacement become institutionalized more broadly. Thus, it would be unsurprising that the category of criminal would collapse into that of the stateless while the stateless’ existence would increasingly be criminalized. At this moment, *both* forms of criminalization would be launched outside of the rule of law, and the stability of fixed institutions would be displaced by discretionary power and rule by decree, leading to individuals whose status is that of an “outlaw.” While Arendt’s work on the nation-state encompasses both possibilities—a dialectical *distinction* between criminal rights and stateless’ rightlessness subsequently leading to a *merging* of these two categories—she continued to insist on the hierarchical distinction in many of her later writings (see Arendt 2018d; Arendt 1972). A similar dynamic occurs in two other instances.

First, in her historical analyses on the development of racism in chapter 6 of *OT*, she treats one stage of racism—the imperialist wave of the late 1800s and turn of the century—as distinct and yet related to the next stage of interwar racism (see Arendt 1979, 183-184 in particular). In doing this, she effaces the uniqueness of the situation of the colonized, missing deep forms of violence and racism that undergirded most colonial relations (which Frantz Fanon more adequately analyzes after the publication of *OT*).[[30]](#endnote-30) If there is any doubt on this subject, she whitewashes this period even more in “Nation-State and Democracy” (Arendt 2018c): "The imperialist experiment posed a very serious threat to the foundations of the nation-state, in particular when this experiment extended and perverted nationalist ideology into an increasingly bestial racial consciousness. But the legal and political institutions of the nation-state *still ultimately emerged victorious*—at least with regards to overseas imperialism—and *almost always prevented the worst from happening*, namely the ‘administrative mass murder’ that the English imperialists of the 1920s took to be the only way of retaining control over India” (259, my emphasis; see Pitzer 2017, for a detailed empirical account of the systematically heinous treatment of colonized individuals across the globe during the same time period). On the next page, she argues that imperialism *ended*, thus effacing the more difficult reality that the Allied Powers were fighting Nazism while, at the same time, violently dominating colonized areas (as with France and the Algerians).

In effect, while she rightly sees the damage to the nation-state through its imperialistic interventions in Africa and Asia (i.e. the “boomerang effect”), she then fails to see this period as anything more than a *precursor* to the decline of the European nation-state (see Norton 1995). That is, she denies the deeply violent imperialist policies exercised throughout WWII and afterwards, thus engaging in what Miles and Brown call “conceptual deflation”: historically limiting an analysis of racism to one time-period, in order to minimize its significance (Miles and Brown, 1989, ch. 3, esp. 77). This error then explains how she can later worry about the decline of national citizenship for interned Japanese Americans and American communists, and yet cannot recognize the totalitarian tactics used in: the disenfranchisement of African Americans, the internal displacement of the Palestinians, and the long-standing system of racialized violence in colonized areas preceding, during, and after the world war era (Arendt 2018b; Arendt 2006). A contributing factor to these binaries was a sort of idealization of the United States, combined with a misunderstanding of the power of the federal government—indeed its exclusive power over foreigners and naturalized foreigners (discussed above). To the degree that she did not recognize America as a nation-state, she also failed to understand that racism was not merely a “social” issue but one that bore the very same dynamics of the corrosive forms of racism she diagnosed in Europe (see Arendt 2018c, 257; OT 277n21, OT 297).

While Arendt should be credited for deep historical analyses and research of these different subjects, it should also be recognized that she violated her professed anti-foundationalism in these instances (see for example, various theories about this: Benhabib 1996, esp. 149-151; Gündoğdu 2015, 13-4 and 29-37; Honig 1995; Isaac 1998, 61; Simmons 2011). What I mean by this is that Arendt’s historical work focused on the local, geographically *specific* production of power, historical *particularity*, and attention to rupture and discontinuity in their most generative and agonistic forms (see variously Gündoğdu 2015; Villa 1996). After settling in the United States, Arendt repeatedly critiques American policy makers and researchers for using statistics, modeling, and other forms of superficial analysis to make domestic and foreign policy (see Arendt 2018a; Arendt 2018b). She urges an approach that is first rooted in the subject matter and which avoids analogical thinking, ahistorical approaches, and formal modeling over knowledge of the language, history and local conditions. Arendt calls on researchers to treat each situation as unique and historically particular. For this reason, she urges Robert M. Hutchins, President of The Fund for the Republic, “not to develop a uniform method for all [political] issues; on the contrary, it should be a principle to treat each topic separately, not only in terms of ideas and basic issues, but also in terms of ways to approach it” (Arendt 2018b, 102-103). Nevertheless, in treating the “scramble for Africa” as a *precursor* to European fascism, with a historically delimited beginning and end, she inadvertently slips into the forms of comparative analysis and analogical thinking she often decried when observing American policy makers and researchers when they botched foreign policy and ignored domestic issues (see Arendt 1971).

The second failure is related to the first: recognizing at the theoretical level that there were a multitude of forms of disenfranchisement and displacement in this era, but still prioritizing certain causes or groups over others. Again, this is evident in her recognition of the highly undemocratic circumstances of turn-of-the-century imperialism when she argues that some imperialism could simply be tedious but advantageous, as in India. She isolates violence to a few key examples and fails to see how the threat of violence and use of torture often pervaded colonial governance. And while she recognized the beginnings of “mob” rule in colonial administration, she was blind to how this could lead to *long-standing* damage to decolonizing areas.

As I have mentioned, an example of these two deficits in Arendt’s empirical analyses is evident in her discussion of the Japanese Internment, which she finds is a sign of grave crisis of American citizenship: “The issue of statelessness became acute in this country *for the first time* during World War II, when the government decided to intern and deprive of their constitutional rights citizens of Japanese origin” (2018b, my emphasis). In the 1930s and 1940s, the Great Repatriation of Mexicans, Jim Crow, and a eugenic immigration system that led to the lowest numbers of entrants in US history all escaped her as being similarly “acute.” Strikingly she treats the genocidal treatment of African Americans as less urgent and in need of pragmatic reform (on the first point, see Roberts 1998; for a defense of Arendt, see Berkowitz 2018). On the one hand, she calls for extraordinary measures in the case of the Japanese—including a constitutional amendment guaranteeing that no citizen will ever be denationalized and an international move to force countries to accept the right of asylum—and on the other, reformist steps with civil disobedience, a “study of race relations”[[31]](#endnote-31) along “strictly empirical, fact-finding lines,” and a step-by-step pragmatic approach by African American adults (Arendt 2018b; see Arendt 1959; Berkowitz 2018; Hooker 2016; Norton 1995).[[32]](#endnote-32) With regard to Jim Crow—as with colonial subjects—Arendt failed to comprehend the depth of the situation (see Allen 2004; Benhabib 1996; Simmons 2011; Warren 1964). For example, she could have linked forms of segregation and internal displacement to external displacement.

Her treatment of the establishment of Israel and displacement of Palestinians was similarly mixed—not absolutely blind, but more ambivalent. In *OT*, Arendt predicts that the establishment of Israel would inevitably produce the same forms of displacement and disenfranchisement that Jewish refugees themselves had experienced (Arendt 1979, 290). This is because the nation-state was a corrupt model that split the “people” into racialized hierarchies. The use of force would buttress this already-problematic situation.[[33]](#endnote-33) But despite her strong critique of establishing a Jewish state, she treats the plight of the Palestinians as needing reform and not wholesale change, similar to her analysis of Jim Crow America. She recognizes the displacement of Palestinians, the violence behind colonization, and how the imperial powers overseeing the Palestinian Mandate constantly failed to use democratic means to resolve the situation. However, she portrays the Palestinians as irrational and not appreciative of the civilizing nature of the European occupation: “For twenty-five years, the peoples of Palestine could rely upon the British government to uphold the adequate stability for general constructive purposes and feel free to indulge in all kinds of emotional, nationalistic, illusionary behavior” (Arendt 1950). In part, her views of the Palestinians are only evident through their conspicuous absence, as she focuses more heavily on how some sort of homeland can be established in Israel-Palestine without fostering anti-Semitism in the region (see Arendt 1948).[[34]](#endnote-34) In considering her more empirical analyses and political work, it is hard not to reach the conclusion that although she thought racism was deeply wrong she also participated in a developmental logic such that the wealthier and more technologically advanced societies could still benefit “backwards” areas, even if their own administration was full of dullards and buffoons.[[35]](#endnote-35) Her compartmentalization of “economic” and “social matters” from politics perhaps deepens these issues, making for a notable disjuncture between her broader theoretical claims and her empirical work (however excellent work has been done to challenge the idea that Arendt held these spheres as absolutely separate: Dietz 1995; Klein 2014; Markell 2011).

What is particularly interesting is that during this time, the definition of refugee and the Convention on Refugees were being formulated just as the United Nations conducted one of their first humanitarian missions in Palestine. While the UN first sent Quaker volunteers from 1948—50 and later established a permanent mission (UNRWA) that has endured to this day, a “refugee” was defined as existing *outside* of one’s homeland. As Ilana Feldman argues, a “refugee” was conceived of as the opposite of citizen, such that internally displaced subjects of imperial rule were excluded (Feldman 2007). This formulation was in direct response to the Palestinian refugee situation. Similarly, the Refugee Convention of 1951 was narrowly forged: “the Convention was far from universal. Faced with the threat of limitless obligations to accept displaced persons, the drafters developed clearly specified parameters for acquiring refugees status (persecution on the basis of race, religion, nationality, or membership in a particular social group) and limited the Convention’s applicability to those who left their countries ‘as a result of events occurring before 1 January 1951,’…” (Feldman 2007, 133) In this way, refugees were not quite “outside the pale of law” but in fact only conceived in direct reference to the law (Feldman 2007, 133).[[36]](#endnote-36) Those caught in between—the partially disenfranchised (as perhaps African Americans were, if *partial* disenfranchisement can coexist with eugenics), the internally displaced (the Palestinians and many other colonized subjects)—could be the subject of humanitarian relief but not political recognition. Thus, humanitarian relief was the “social and economic” counterpart to the more “legitimate” legal and political status of those accepted as refugees.

While Feldman uncritically cites Arendt in this analysis, her study is also an indictment of Arendt’s own attitude toward the Palestinian’s plight: “this question of politics is one of the endemic challenges of humanitarian relief and law. Its nonpolitical stance is often what make humanitarianism possible—permitting access to populations in need of aid, convincing countries to sign on to refugee conventions—but it also gives humanitarianism a sometimes cruelly narrow focus, able to keep people alive but entirely incapable of changing the conditions that have put them at such great risk” (Feldman 2007, 139). Perhaps Arendt’s participation in Zionist colonization leading up to the Holocaust blinded her to the totalitarian tools used on the Palestinians, even if she foresaw trouble. The fact that the Palestinians were treated as refugees by the incipient international community was lost on her. In this important instance, her “judgment” was not that of an impartial and rational political actor, but as Bill Simmons has argued, someone who lacked reflection (2011).[[37]](#endnote-37) It is even more interesting that the United Nations similarly compartmentalized this group as needing urgent intervention but not refugee status such that an in-between status was created without any acknowledgement of the fact.[[38]](#endnote-38) Arendt seemed to believe her work was critical of extant human rights enforcement—not aligned with it (see Gündoğdu 2015, introduction).

In turn, these blind spots help to explain why her arguments both suggest the convergence of criminal and stateless, particularly to the degree that both spheres are racially-inflected, and yet she denies this possibility; she predicts the displacement of Palestinians and the possibility of continued violence for decades to come, but refuses to recognize the profound forms of displacement, rightlessness, and starvation that the majority of Palestinians experienced in the 1940s and ‘50s (as well as other similarly situated colonized subjects); and (again) she engages in a more wholescale refusal to comprehend the eugenic nature of Jim Crow, at times blaming African Americans for pursuing the wrong path and for not acting pragmatically. In fact, again, she could have recognized that segregation was a geographical counterpart to external displacement.

While it may be unsurprising that a refugee of this period could subscribe to forms of civilizational superiority and developmental logic, these issues pervade comparative politics and IR research even today.[[39]](#endnote-39) What *is* surprising is that these examples undercut her innovative critique of the nation-state as well as her historically specific approach to political questions. In these particular instances, she engages in analogical thinking (comparisons between groups such that she is blind to the unique and yet deeply related situation of the supposedly more privileged or better off group) and an ahistorical approach to different time periods such that one period appears to be a stepping stone to another (without appreciating the unique and yet—again—related situation of the allegedly better period). To put it differently, in creating gradients of oppression and racism, Arendt ignores significant *linkages* between these different instances. However, these connections need not be viewed in ways that would lead to political modeling or other forms of intellectual homogenization of subject matter—rather, she could recognize the local variability of different methods of domination, racialization, and the legal suspension of the law.

In this way, she would have appreciated the profound levels of coercion, displacement, and racist imperialism that characterized that era and continued throughout the world war era. In fact, she could have noted the deep hypocrisy of the British and French who ostensibly opposed the Nazis but ruthlessly put down national uprisings in India, the Middle East, Africa, and “Asia” (see Fanon; Pitzer 2017; Said 1979). This observation would not have undermined her arguments but would have ensured adequate complexity and consistency. At the same time, her empirical work subscribed to a sort of “reform versus revolution” mentality without an acknowledgement of this. Thus, she felt that African Americans and Palestinians should dispassionately act in highly pragmatic and reformist ways—including civil disobedience—in contrast to situations that she believed needed urgent and wholesale intervention, as with (again) the disenfranchisement of Japanese Americans and the plight of Hungarian refugees in 1956. Essentially, her theories pointed toward an intersectional and interdisciplinary approach to complex political issues but in many of her later political writings, she adhered to implicit hierarchies that undermine this intersectional sensibility.

Arendt’s criminal-stateless comparison maps onto a very real distinction between criminal law and migration policy in the United States. The treatment of foreigners has been conceived of by legislators and Supreme Court justices as opposite that of the criminal justice system—that is, not as a separate but parallel sphere of law, but as *dialectically* opposite criminal law until 1996 (see, in particular, *Wong Wing v US* 1896). Arendt’s work helps us to understand this dialectical division and how the treatment of foreigners as non-persons aided the *establishment* of modern US sovereignty. Even when the two spheres of law blur, beginning in the 1990s (see Stumpf 2006), Arendt’s ideas are still helpful to understand what was lost in terms of foreigners’ rights and how detention and deportation could become key policies from this decade on. Her analyses of camps, displacement, and authoritarian power dynamics are also relevant throughout the twentieth century but increasingly so in the United States after the criminal-stateless distinction is blurred in the 1990s (see Stumpf 2006; Varsanyi 2007). This is because legal personhood for both foreigners and prisoners diminished, such that mass incarceration and mass detention emerged in this era, bringing the prison closer to the camp (see Alexander 2010; Arnold 2018; Stumpf 2006).

In the Trump era, in which immigration status has become the key focus in an increasingly arbitrary policing system, the “camp” has become a key part of immigration policy, and immigration police have established a steady and conspicuous presence throughout this country, Arendt’s work emphasizes the nature of the problem that cannot be reformed, but calls for revolutionary change. Although she might not have recognized these things, the US “nation” has clearly conquered the “state” with the travel ban, the characterization and treatment of the southern border as an “emergency,” and the mind-bogglingly explicit ways that immigration enforcement is racist (see Bosniak 2011; Johnson 2005). Family separation—a policy that has been almost continuously practiced in one way or another since at least 1924—is an obvious example of genocidal practices. Under Trump, this policy worsened as it occurred forcibly at the border, leading to thousands of “missing” children and children treated as “adults-in-miniature” (whether they faced court and deportation alone or forced adoption). As detention and deportation regimes have grown since the turn of this century, it is also sadly clear that human rights norms are secondary to national interest, with weak enforcement of inalienable rights by domestic forces or human rights groups. Similarly, the degree to which the criminal justice system is not just racist but has experienced significant—and often unremarked—forms of degradation in the areas of prisoners’ rights, prison conditions, post-release disenfranchisement, and other collateral consequences are evidence of another way that the “nation” has conquered the state and the police dominate urban areas (see Alexander 2011; Dayan 2011; Gottshalk 2016).

Arendt’s ideas also help us to predict that the dialectical binary between civil law (immigration law) and criminal law *could* collapse as each category blurred into the other, if only partially. She indicates as much in arguing that the transformation of the state into totalitarian rule would ensure terror for the entire population and would add new groups to the already stigmatized outgroups deprived of rights. However, she fails to note that the division between criminal and statelessness would ensure that their opposition was also *mutually constitutive*. For example, in the Chinese Exclusion cases, justices specifically argued that detention and deportation were *not* punishments or liberty deprivations invoking any sorts of prisoners’ rights; foreigners were often deprived of *habeas corpus* rights for the same reason; and foreigners could not be sentenced to hard labor or sentenced at all (see, in particular, *Wong Wing v US* 1896). It would not be an exaggeration to argue that much of the foundations of the plenary power doctrine and immigration policy were dialectically conceived in opposition to the criminal justice system. Although Arendt argues that these sorts of moves lead to wholesale “damage...[to] the very structure of legal national institutions,” she still overlooked this dialectical interaction in lived daily reality when she resided in the United States (see Arendt 2018c, 257; OT 277n21, OT 297). This, in turn, blocks her from recognizing how the criminal, too, could become an “outlaw” in important respects (Arendt 1979, 286). The convergence is predictable, given the unifying elements of seemingly opposed spheres: the suspension of rights, confinement, and the increasing predominance of race in shaping political membership. In particular, Arendt neglects to consider that racism could be the great connector between the two spheres: criminal and stateless. To be fair, Arendt does recognize that there are racial minorities who are treated badly outside of the Nazi context (colonial others, the Palestinians, African Americans)—but she fails to *consistently* connect the plight of these groups, showing insensitivity to the urgency of each group’s particular situation.

Her blindness to her “crypto-normativity” in these instances despite professing the opposite in writing about approaches to political understanding are forms of blindness in which we—the American public—often engage. The current debates in which people argue against the use of “camp” in describing detention conditions for refugees (Sullivan 2019, e.g.), the suggestion that these dynamics are new and unique to Trump, and the ignorance of how prison conditions have declined precisely *in relation* to standards of immigrant detention—are all evidence of this. In this way, her shortcomings are instructive for us. Her blindness is also reflected in the current debates about the southern border and detention centers as well as a failure to connect these issues to criminalized racial minorities and prison conditions.

*~conclusions: the contemporary relevance of Arendt’s work in relation to the contemporary problem of crimmigration*

*“Totalitarianism strives not toward despotic rule over men, but toward a system in which men are superfluous.”* (Arendt 1979, 457)

Arendt’s argument—that a stateless person’s situation would be improved by being treated as a criminal—operates on several different registers. First, at a visceral level, the comparison invites shock and repulsion that an innocent person can be treated far worse than an individual committing an immoral act. Second, at a historical level, she is comparing the more individual statelessness of the past to her present, in which a racist state is confronted with and/or has produced *mass* statelessness. Third her analyses are relevant to US history, not through sheer coincidence but rather because the United States, like Europe, had adopted eugenic policies in the late 1800s, using Chinese Exclusion to establish a form of power that was so discretionary, it operated in precisely the way Arendt described when discussing refugees decades later.[[40]](#endnote-40) As Arendt’s work suggests, representative democracies based on territorial belonging allowed for a dialectical opposition between civil or domestic matters and foreign relations of the sovereign state, including the treatment of “foreigners” on domestic soil.[[41]](#endnote-41) At each level, Arendt’s analysis of the uniquely modern and “democratic” nature of statelessness helps us to understand the injustice and legal extra-constitutionality of the recent administration’s treatment of would be refugees. To argue today that conditions are significantly worse than in past decades is to ignore the long history of eugenic immigration policy operating in the civil sphere and the denial of even criminal rights or personhood to the foreigner. For example, family separation policies may have been more explicit under Trump and much more dramatic—but forms of family separation have been practiced since at least 1924 and even after family reunification was provided for in 1965, the increasing number of obstacles to entry, naturalization and/or refugee status after 1986 have perpetuated these policies at the enforcement level.

Whether detention consists of bad food or cages, the legal foundations allowing for detention—particularly at the mass level—make even the cleanest center a “camp,” per Arendt’s theories. The proof is not in particular details but rather the broader reality that detention centers have been conceived of as the opposite of prison and do not constitute a “liberty deprivation.” Therefore, there is no right to know why an individual is in detention, how long this person will remain there, no right to counsel, and no basic rights of prisoners. However, just as sweatshops can have an influence on formal job market conditions and wages, the rightlessness of immigrant detention can bleed into the criminal justice system.[[42]](#endnote-42) As I have discussed, the expansion of mass confinement in a legally grey area is the result of a mutually informing set of power dynamics diminishing prisoners’ rights and conditions (on legal “grey holes,” see Dyzenhaus 2006; Dyzenhaus 2011; Feldman 2017). In each case, the confined are not full “persons” before the law and the nature of their crime is such that they are more “outlaws” than criminals.[[43]](#endnote-43) Increased prison time, the greater use of physical and psychological torture (including making administrative segregation a regular feature of prison practices), and lengthy and expanded forms of post-release disenfranchisement since the 1990s ensure that criminal citizens (or: criminalized citizens) also lack the right to rights. Before that decade, while the average prison may never have been enlightening or rehabilitative, shorter sentences and fewer collateral consequences after release meant that citizenship had some meaning for the majority of US residents.[[44]](#endnote-44)

Shifts in confinement resulting from crimmigration signal important changes in political membership, making certain parts of the population rightless far beyond a limited period of confinement.[[45]](#endnote-45) For these reasons, while some legal scholars now argue that the plenary power doctrine is dead, it is more accurate to argue that extra-constitutional discretionary power now *also* characterizes the status of prisoners—perhaps not absolutely, but in important ways—and both groups now have more diminished forms of legal personhood than in the past (see Kagan 2015, e.g.).[[46]](#endnote-46) Arendt predicts this merger at the more abstract level of analysis while showing a tendency toward hierarchical compartmentalization when dealing with the facts on the ground. *But her blind spots are our own blind spots* and therefore, the more consistent and helpful of her insightful analyses help us to understand that a prisoner-stateless nexus has been established that diminishes legal personhood in ways we haven’t recognized, because like Arendt, we can also draw on false comparisons and analogical thinking.

First, when we claim that things today are worse than the past, not only are we ignoring history, we are disregarding the broader power structures that have allowed for several variants of racialized detention, family separation, and extra-constitutional but legal measures towards foreigners for over a century. On the other hand, to deny that detention is a camp then denies links between US migrant detention and other geographical and historical instances of camps. Second, to claim that today’s immigrant crisis is rooted in some sort of bureaucratic and therefore lawful system—in contrast to the “illegal” individuals who are targets of these policies—misses how deeply arbitrary and racist migration enforcement is. In turn, these power dynamics unsurprisingly bleed into domestic policy. If the existence of statelessness meant that some human beings had become “superfluous,” the issue is more profound than is currently recognized. And third, regarding the criminal-stateless binary, I do not believe Arendt is hyperbolizing the rightlessness of the stateless—the hyperbole is in assuming that criminals have more rights than they actually do, in a racist state. Importantly, Arendt shows us how democratic states can expand sovereign powers that are both legally authorized and yet, which are profoundly undemocratic, thus challenging the presuppositions of those who attacked AOC in her characterization of detention as a camp.

It is up to the political theorist to identify in-betweenness and not reinforce political ideology seeking to create distinct and allegedly, unrelated spheres. In choosing the stateless as the key figure of modern power or the camp as the primary space of confinement, Arendt (and Giorgio Agamben) replicates the stark binaries of the state that obscure legal greyness, in-between statuses, and varying forms of geographical displacement or immobility. Both authors’ comparisons *are* accurate in important ways but to the degree that they are describing binary modes of operation, they forget that binary modes are also connected in their opposition, running the possibility of convergence or overlap. To be clear, I am not arguing that these are false binaries but rather that they are set up by state powers as absolutes, to divide the warfare and welfare, the foreign and domestic, and/or the foreigners from citizens. As I have indicated, these divisions artificially compartmentalize the potential overlap of these different spheres, particularly when power is increasingly discretionary with no mechanisms of scrutiny or outside review.[[47]](#endnote-47)

Similarly, to the degree that we reject the idea of the detention center as camp, with its attendant suspensions of the law and legal status, our blindspots could be characterized as prioritizing the national and sovereign over and above the domestic and relatedly, a limited notion of what constitutes the “political.” At the international and national level, there is a broad failure in recognizing varieties of displacement, apartheid, and geographical immobility, in an effort to claim that each issue is unique and temporary. If linkages were established between each issue, the nature of the problem would appear to be far more significant and long-standing.

As the debates about immigration and detention centers indicate, accuracy in assessing today’s problems is essential in understanding the dangers of analogous thinking, faulty historicity, and a reformist mentality when revolution is needed. A correct diagnosis of the problem is key—first in understanding the extent to which current migrants arriving at the southern border AND many resident immigrants are stateless (the former) or face statelessness (the latter), but also in understanding how the practices used on foreigners unsurprisingly can be used on other racial minority groups and political “deviants.” In conclusion, Arendt’s theoretical work is up to the task of understanding these complex processes of denationalization and racism while the blind spots in her empirical analyses are ones reflected in popular debates. For both reasons, Arendt’s work continues to be important in an age of racialized denationalization and a return to elements of mob politics. The question is if we can draw on these theories without also falling into the same sorts of traps that Arendt did? To the degree that we only do partially, falling back on the nation-state as “realistic” or failing to recognize the depth of racialized politics (extending not merely to foreigners but citizens), that is on us—not Arendt.

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*Wing Wong* *v United States* (1896)

1. When the first of the Chinese Exclusion cases was decided, providing that immigration policy cannot be subjected to constitutional scrutiny. [↑](#endnote-ref-1)
2. When legal personhood was no longer protected at the state level, with partial federal devolution of plenary power to the states. [↑](#endnote-ref-2)
3. I am using sovereignty in a more conventional sense than Arendt’s conception of non-sovereign political action, even if my comments about state sovereignty help to explain why she calls for non-sovereign political agency. [↑](#endnote-ref-3)
4. Immigration entry quotas were established in 1924, based on the Dillingham Commission’s eugenic “findings” in 1907, and only ending in 1965. Arendt did not comprehend that the US used many of the same *tactics* as the Nazis, granted with different aims and outcomes. To be fair, the words eugenic and genocide were not commonly used during this period. [↑](#endnote-ref-4)
5. Even the ostensible termination of these two eugenic systems—racial apartheid and eugenic quotas in migration policy—occurred in the mid ‘60s, with civil society groups acknowledging the links between the two systems. [↑](#endnote-ref-5)
6. The primary aim is to investigate the contemporary relevance of Arendt’s work and thus the empirical explanation will be brief. [↑](#endnote-ref-6)
7. However, please see Roger Berkowitz: “To do justice to Arendt’s thinking on questions of race requires moving beyond accusatory citation.What is required is an exploration of how Arendt contributes to our understanding of race within the modern contexts of totalitarianism, de-politicization, and assimilation.” (816) [↑](#endnote-ref-7)
8. For example, Arendt states: “The clearer the proof of the inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal statusand rule with an omnipotent police.” [↑](#endnote-ref-8)
9. A distinction that Sheldon Wolin and (separately) Carole Pateman have referred to as “welfare versus warfare.” [↑](#endnote-ref-9)
10. Again, Berkowitz: “Just as Arendt’s writing about blacks in America can be found wanting in their appreciation of the realities of American racism (as she herself admitted to Ralph Ellison), so too do her comments on savages in South Africa (which she applies to the Dutch Boers as well as to native Africans), her dismissive comments on the educational importance of learning Swahili, and her cursory reading of Fran[t]z Fanon all suggest a thinker who was certainly a product of her white, European, and Jewish background. And yet Arendt also is someone who was deeply attuned to the evils of racism.” (820) [↑](#endnote-ref-10)
11. Ayten Gundogdu has proposed reading Arendt “against the grain,” (6) but in doing so she idealizes Arendt by not holding her accountable for her lapses and she fails to understand the significance of the criminal-stateless binary. (96—98) (2015) [↑](#endnote-ref-11)
12. The three Chinese Exclusion cases were: *Chae Chan Ping v United States* (1889); *Fong Yue Ting v United States* (1893); and *Wing Wong* *v United States* (1896). [↑](#endnote-ref-12)
13. While Chinese Exclusion ended, the cases were never overturned and plenary power is stronger today. [↑](#endnote-ref-13)
14. In this context, “race” involved mental fitness, homosexuality as pathology, and able-bodiedism. [↑](#endnote-ref-14)
15. Arendt recognized the displacement of U.S. interned Japanese residents but did not seem to know that detention and deportation were used to “punish” suspected communists. [↑](#endnote-ref-15)
16. In this way, discrimination on the basis of alienage can punish racial descent or alleged political deviance. Again, Mezei’s only “guilt” was his attempt to see his mother in Eastern Europe as Cold War policy emerged. [↑](#endnote-ref-16)
17. Which is why Colin Dayan criticizes Arendt’s claim that non-persons are “beyond the pale of law” (Dayan 2011b, 72—73). However, Arendt’s work may be more complex than Dayan gives her credit for—to Arendt, groups whose status was beyond the pale of law experienced a highly legal and judicial scaling back of rights such that the arbitrary outcomes were paradoxically rooted in a chaste regard for legalities: “it is the monstrous, yet seemingly unanswerable claim of totalitarian rule that, far from being ‘lawless,’ it goes to the sources of authority from which positive laws received their ultimate legitimation, that far from being arbitrary it is more obedient to these suprahuman forces than any government ever was before, and that far from wielding its power in the interest of one man, it is quite prepared to sacrifice everybody’s vital immediate interest in the execution of what it assumes to be the law of History…” (Arendt 1979, 461). [↑](#endnote-ref-17)
18. Arendt’s work explicitly warns about modern government in the global north alone. She assumed that most other governments were under imperial or traditional rule. Nevertheless, her theorization of totalitarianism extended beyond Germany. [↑](#endnote-ref-18)
19. This violates constitutional guarantees against double jeopardy and retroactivity. [↑](#endnote-ref-19)
20. Illogically, some interpreters of federal devolution have claimed that this was a sort of transfer in which immigrants’ non-personhood expanded at the state and local level but contracted at the federal level. [↑](#endnote-ref-20)
21. For example, decisions that watered down the definition of cruel and unusual, thus allowing for the exercise of torture if it is regularly practiced and therefore tying the definition of cruel to unusual, were later replicated in the torture memos of 2002 and 2003 and the United States’ decision to add an article of reservation to our adherence to UN guidelines on torture. The effect has been to legitimize the use of torture in any space of confinement run by the US government. [↑](#endnote-ref-21)
22. Parolees in the criminal justice context, not foreign parolees (which, despite the name, is an entirely different legal category based on legal non-existence). [↑](#endnote-ref-22)
23. I use the term “tactics” to indicate a system that may be totalitarian in its deployment of near-absolute power but which does not mean that every aspect of US government is totalitarian. [↑](#endnote-ref-23)
24. Arendt warned that the tactics use on the stateless would eventually be used on citizens: “the clearer the proof of the inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, *the more difficult it is for states to resist the temptation to deprive all citizens of legal status*and rule with an omnipotent police.” (my emphasis) Arendt, OT, 290. Consider also: Arendt, OT, 277: “Statelessness, the newest mass phenomenon in contemporary history, and the existence of an ever-growing new people comprised of stateless persons, the most symptomatic group in contemporary politics.” And 277, n20: “every event after WWI added a new category of those who lived outside the pale of the law.” [↑](#endnote-ref-24)
25. Today, to the degree that human rights are still implemented via the nation-state, her arguments are sadly relevant (see Falk 1998; Moyn 2010). [↑](#endnote-ref-25)
26. And how their disenfranchisement alienates them from the citizen body. [↑](#endnote-ref-26)
27. The textual evidence is that she insisted on this distinction up through the 1970s—for example, see

    Arendt 2008c. This is an exchange with Hans Magnus Enzensberger in 1964, published in the US in 1974, Arendt 2018c, 308—315; and Arendt 1972. For an alternative perspective on the importance of this comparison with which I respectfully disagree, see Gündoğdu 2015. [↑](#endnote-ref-27)
28. As I discuss, her treatment of the imperialist phase is similar: racism developed and atrocities occurred, but not at the level of the Holocaust. She is clearly idealizing imperialism and/or making some standard of assessment that effaces its enveloping nature, which was often so thoroughly coercive and systematically violent that Frantz Fanon argued that economic gain was superstructural to racist imperialism. [↑](#endnote-ref-28)
29. With regard to this particular detail, I differ from Cristina Beltrán’s argument (2009) that Arendt failed to recognize “economic migration” at all—perhaps more disappointingly, Arendt *did* recognize that economic migrants were “political” in the Holocaust context but failed to recognize this convergence in other cases. (Arendt 1979, 286; see also Hans Magnus Enzensberger’s insightful critique of this facet of Arendt’s work in Arendt 2018d) [↑](#endnote-ref-29)
30. As readers probably know, Arendt responded to Fanon in *On Violence*, although the book ignores key claims in Fanon’s work, narrowly construing the role of violence in decolonizing areas and ignoring the necessity of armed resistance. [↑](#endnote-ref-30)
31. This is ironic when considering her pronouncements on such studies in her essay on “Civil Disobedience,” in which she argues that they become substitutes for action. [↑](#endnote-ref-31)
32. In his critique of Katherine Gines’ 2014 book, Berkowitz rightly pointed out that Arendt also called for a constitutional amendment “inviting” African Americans into the body politic. Berkowitz sees this as significant, while authors like Anne Norton have criticized this invitation. [↑](#endnote-ref-32)
33. As readers probably know, her involvement in this matter was not purely intellectual—she aided Jewish refugees in getting to Palestine and participated in important civil society groups aiding colonization. [↑](#endnote-ref-33)
34. Thanks to XXX for this insight (my student researcher, acknowledged above). [↑](#endnote-ref-34)
35. This assessment of US politicians is evident in multiple texts, particularly as the Pentagon Papers were released and the Watergate scandal occurred. [↑](#endnote-ref-35)
36. Feldman argues that the 1951 Convention on Status of Refugees was created to deal with refugees and internally displaced peoples (IDPs). In developing the definition of a refugee as being outside of his/her home country, this committee purposefully excluded a significant number of colonized subjects who were stranded in their own countries and yet displaced. As Feldman notes, the exclusion of colonial subjects was due to the dialectical interaction with the category of citizen: displaced peoples in Europe had lost citizenship but colonial subjects did not suffer this loss. UN aid providers-- the Quakers (AFSC)—ended up quitting this mission when they realized no resolution of the Palestinians’ displacement was planned. [↑](#endnote-ref-36)
37. Nevertheless, her mere survival and sheer luck does not make her “white” or privileged—just blinkered. To deny this is to deny US eugenic policies towards Jews in this era. [↑](#endnote-ref-37)
38. Many Palestinians were given ration cards—only available to bona fide refugees and thus, the one admission by the UN that they were refugees—but over time, their displaced status became permanent and aid workers dropped this language. [↑](#endnote-ref-38)
39. e.g. teaching Kissingerian “realist” theory as if it were neutral. [↑](#endnote-ref-39)
40. The key role of the Pioneer Fund in linking the US eugenic movement to the Nazis is but one example of the interaction of these countries on the subject of “race science” versus the idea that US eugenics programs and policies were merely “similar” to those of its European allies and enemies. [↑](#endnote-ref-40)
41. Noting that many of these foreigners were former citizens whose citizenship was stripped through racial laws. A similar process of denationalization and non-personhood occurred in the U.S. with Chinese individuals and later Japanese individuals, eventually extending to residents and new entrants from roughly ¾ of the globe deemed racially undesirable. [↑](#endnote-ref-41)
42. In research for a recent book, I found no such order of events but rather the simultaneous interaction of eugenic treatment of African Americans and that of foreigners, particularly the Chinese, in the late 1800s. [↑](#endnote-ref-42)
43. For a lengthier treatment of legal personhood in the US context see the first chapter of Arnold, *Arendt, Agamben, and the Issue of Hyper-Legality*. The term “person” is derived from the 14th Amendment and not philosophy. [↑](#endnote-ref-43)
44. Although this argument is difficult to make without noting serious caveats, such as class bias, racism, gender inequality, and a myriad of other intersecting or overlapping forms of *de jure* and *de facto* marginalization. [↑](#endnote-ref-44)
45. The recent “Free Meek” campaign illustrates how post-release disenfranchisement can lead to re-imprisonment based on the most minor of infractions. For foreign residents, the Trump administration’s decision to dispense with any prioritization of who is targeted for detention and removal—from children to refugee petitioners to those with temporary protected status (TPS)—is a corollary to the broad racialization of crime. For example, in both cases driving while black and/or driving while foreign is a dicey prospect. [↑](#endnote-ref-45)
46. In this way, the US has expanded the use and breadth of totalitarian tools, even if it is not a totalitarian government. The expansion of these tools makes the election of a Trump-like figure unsurprising. [↑](#endnote-ref-46)
47. While this has always been true of the immigration system since the late 1800s, this is increasingly true of prisoners’ rights and conditions since Clarence Thomas decided that “cruel” must be defined by “unusual,” thus changing the reference point for this once-protected right. Relatedly, Thomas and Scalia have argued that prisoners’ rights are merely privileges. See Dayan 2011b on these 1980s era shifts. [↑](#endnote-ref-47)